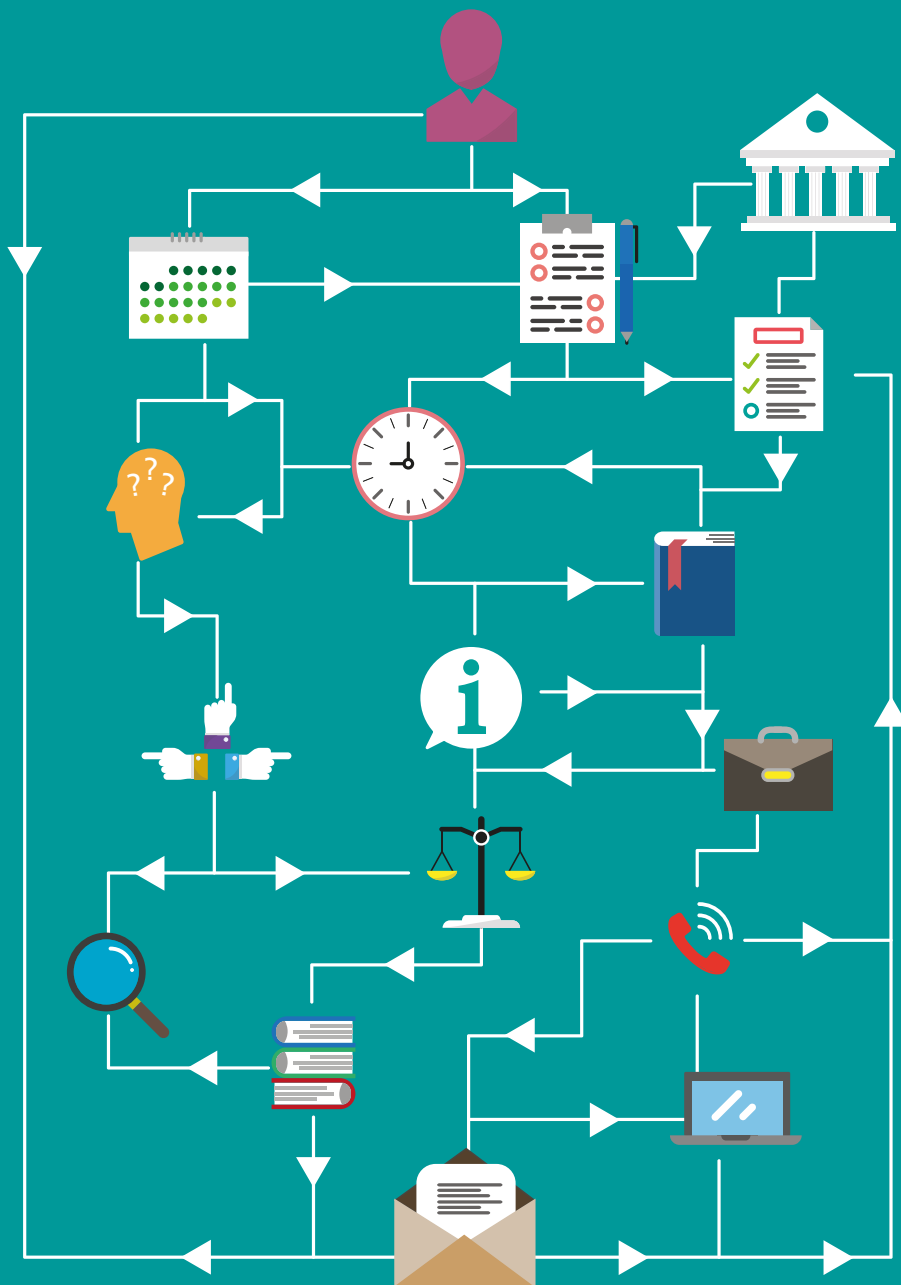


Litigants in person in Northern Ireland: barriers to legal participation

Gráinne McKeever, Lucy Royal-Dawson,
Eleanor Kirk and John McCord



Litigants in person in Northern Ireland: barriers to legal participation

Gráinne McKeever, Lucy Royal-Dawson,
Eleanor Kirk and John McCord



This project was funded by the Nuffield Foundation, but the views expressed are those of the authors and not necessarily those of the Foundation.

© Gráinne McKeever, Lucy Royal-Dawson, Eleanor Kirk and John McCord
Ulster University: Belfast, 2018

ISBN 13 978-1-85923-279-8

Summary Report

This is a summary of the report on the two-year study of litigants in person (LIPs) in the Northern Ireland Courts and Tribunals Service. It is an overview of the study's purpose, method, findings and recommendations. The full version of the report is available at: <https://www.ulster.ac.uk/litigantsinperson>.

Outline of the study

This study was conducted to fill a gap in research on the experiences of people who go to court without a lawyer, known as litigants in person (LIPs), in the civil and family justice system in Northern Ireland. It builds on empirical studies and justice policy reviews on LIPs in civil and family law in several jurisdictions.¹

Civil and family law in Northern Ireland is similar to that of England and Wales; Scotland has a different legal system. The provision of legal aid in Northern Ireland also operates in a similar way, with means and merits tests determining whether individuals are eligible. What is different in Northern Ireland from England and Wales, however, is the scope of legal problems that are covered by legal aid. In England and Wales, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 drastically reduced the type of legal problems that legal aid covers. This legislation does not apply in Northern Ireland and so the type of legal problems that are covered here are similar to those that would have been covered in England and Wales prior to 2012.

The similarities between the Northern Ireland legal system and other jurisdictions in the United Kingdom, and internationally, mean that findings and recommendations made in this report will have a broad reach across other systems. The disadvantage of the distinctive elements of the Northern Ireland legal system, however, is that LIPs may not be aware of these distinctions and rely instead on resources that are not relevant or applicable in Northern Ireland.

The research focuses on LIPs involved in proceedings in Divorce, Ancillary Relief, Family Homes and Domestic Violence, Family Proceedings, Bankruptcy and Civil Bills. The aims of the study were:

- (a) to understand how LIPs participate in their case proceedings;
- (b) to evaluate the impact of LIPs on the Northern Ireland court system;
- (c) to assess the human rights implications of acting without a lawyer;
- (d) to evaluate the impact of providing advice to LIPs, both on their participation and on the court.

Using qualitative and quantitative data gathered from LIPs, the Northern Ireland Courts and Tribunals Service (NICTS) and court actors (judges, solicitors, barristers, McKenzie Friends and Court Children's Officers), the study provides a holistic view of how LIPs not only experience the court system but have an impact upon it.

Guiding the study is the right of access to justice, which is understood in the human rights frame of reference as the right to a fair trial and is protected under Article 6 of the European Convention on Human Rights (ECHR). The Northern Ireland Human Rights Commission (NIHRC) analysed cases on the right to a fair trial that were decided by the European Court of Human Rights and some UK jurisdictions, including Northern Ireland (see the main report, Appendix 1). This human rights analysis was used to support the interpretation of our empirical data. While access to justice encompasses the right of everyone to a fair hearing, there are two protections of specific relevance to LIPs:

Effective participation: the LIP is able to participate effectively in the proceedings to a level where he or she is able to influence them so that the court can assure procedural and substantive justice.

Equality of arms: the fair balance between the parties in the opportunities given to them to present their case in a manner which does not disadvantage them with respect to the other side.

The study included an experimental element to understand the support needs of LIPs and to test a particular model of support for its impact on LIPs’ ability to participate in their proceedings. A procedural advice clinic was developed and run by a professionally qualified solicitor at the NIHRC. Some study participants who were involved in private family law and matrimonial proceedings were offered its services and attended the clinic.

Data collection






From September 2016 to September 2017, LIPs in the targeted proceedings were recruited to the study on the day of their court appearance. Without prior notification of whether an individual listed for appearance in court on any given day would be represented or not, the method of sampling was to approach the LIPs on the day of their proceedings. In all, 179 LIPs gave consent to participate in the study and were observed in court, interviewed and completed a questionnaire relating to their level of participation in proceedings and their general health. A further 59 court actors were also interviewed.

From January 2017, LIPs in family and matrimonial proceedings were offered the services of the procedural advice clinic at NIHRC. Additional data in the form of records on their advice sessions, observations, interviews and a secondary questionnaire were collected from the 25 individuals who attended.

Courts actors and LIPs in each of the targeted business areas were sampled until ‘saturation’ was reached, that is, until it became clear no previously unstated points of view or phenomena were being advanced by them. Qualitative analysis does not require the sample to be representative of the population, but rather is used to demonstrate the depth and breadth of experience of the target population in the chosen context.

NICTS provided us with anonymised information management data under a data protection agreement on all participants in the civil and family proceedings from 2012-16 to facilitate an estimate of the prevalence of LIPs per year.

The data collection resulted in a huge dataset (see below). When the data were analysed, they yielded a great deal of detail and nuance, which are covered in the main report. Only a summary is given here.

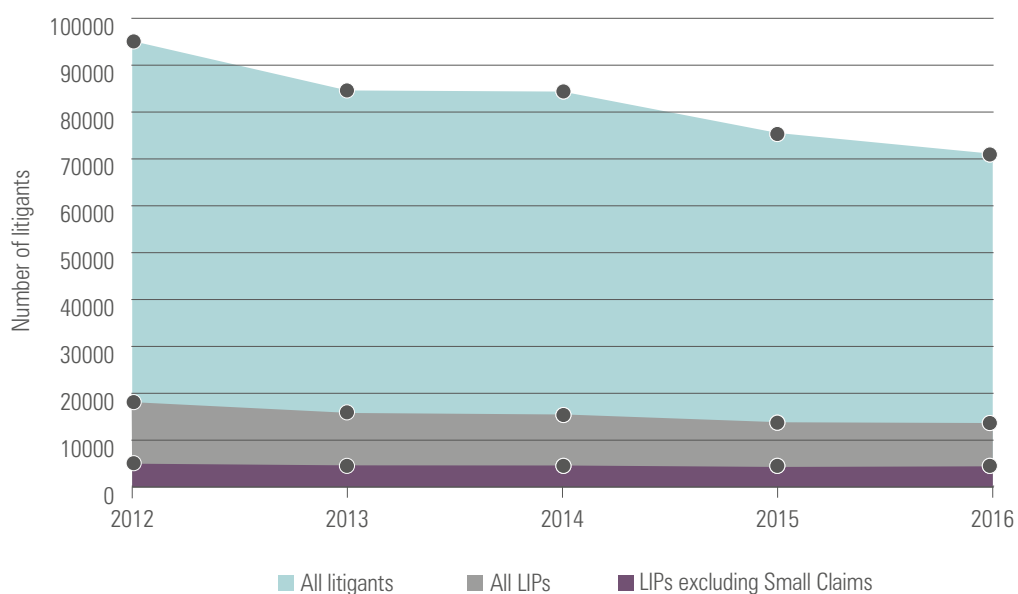
Qualitative data	Quantitative data
 214 transcribed interviews	 139 completed questionnaires
 275 typed court room observations	 Five years’ management information data from NICTS
 49 typed clinic session records	

LIPs in Northern Ireland

Information management data provided by NICTS show that the number of LIP participants in civil and family proceedings in Northern Ireland in the years from 2012 to 2016 decreased from 19,000 to 15,000 (see Figure 1), but they formed a steady 20% of the litigant population. LIPs in Small Claims proceedings make up the majority of people representing themselves, and when they are excluded from the figures, around 5,000 people a year participated in other business areas – about 5.5% of all litigants. After Small Claims, the largest numbers of LIPs were in Divorce, Bankruptcy, Family Proceedings, Family Homes and Domestic Violence, and Civil cases.

In 2017 the Northern Ireland judge-led Family Justice Review and Civil Justice Review included recommendations for dealing with LIPs.² They acknowledged that this study was taking place and that it would provide empirical data on the needs and experiences of LIPs which would be informative to the reviews' consultative bodies. Our findings validate several of the reviews' recommendations, and we make further recommendations to address additional needs identified in our data.

Figure 1: All litigants and LIPs in civil and family proceedings 2012-16 *Source: NICTS*



Reasons for self-representing

There were many reasons why people self-represent, and the main one was unaffordability. Many of the LIPs informed us that they did not qualify for publicly funded financial assistance for legal representation, but could not afford the cost of representation. It should be noted, however, that this research does not examine the effectiveness of legal aid in supporting LIPs. Many LIPs expressed a preference to be represented and dissatisfaction that they were not. Some LIPs made an analysis of the costs and benefits of representation and decided they could not justify the cost for the benefit or value they felt it offered. Others had had negative experiences with previous representatives and reported being kept at arm's length from their own proceedings, so declined to seek legal representation. Lawyers interpreted LIPs' dissatisfaction with the legal profession to be due to LIPs not getting the outcome they wanted or not wanting to accept the advice from the legal representative.

LIPs challenge the court norm

There was an implicit understanding that the court norm expects all litigant parties to be represented by professional legal practitioners. LIPs challenge this norm and it was clear that the court system was not designed with LIPs in mind. Many LIPs felt out of place, like outsiders, even though they were legitimate court users. There have been adaptations to the needs and presence of LIPs in the Northern Ireland court system and there is good practice to build upon, but these changes are not system-wide and they do not go far enough. They attempt to fit the LIPs into the system which is designed for legal representatives, rather than fit the system to the litigants it is supposed to serve. The principle that the purpose of the courts is to serve all people in search of legal remedies was contradicted and the right to a fair hearing was threatened.

Evidence of LIPs' lack of fit with the court norm

LIPs are not lawyers and their lack of fit with the court norm had an inevitable impact on the court system. Court actors reported their frustration at the extra time and support they needed in court and at the court counters, which some court actors experienced as challenges to impartiality. For some court actors, the presence of LIPs was a source of irritation or frustration: most often for legal representatives on the opposing side, but also for some court staff and judges. The irritation arose both as a result of insufficient accommodation of LIPs' lack of expertise in the system and in response to a few difficult LIPs who presented particular behavioural and procedural challenges. Some legal representatives had experienced abusive encounters with LIPs, justifying their wariness. The irritation influenced their perceptions of LIPs, and how they behaved towards them.

Court staff did what they could to help LIPs but often felt constrained by the time they could spend helping LIPs with the information and support they needed. They found LIPs misunderstood their role and duty to be impartial, which was sometimes challenging to deal with. Particular administrative problems arose when errors were made in LIPs' cases or when they were from other jurisdictions. Systems did not yield to their non-lawyer status.

Some court actors, including some judges, categorised LIPs as either being self-represented from choice or having no choice. They regarded the latter group with more sympathy and deserving of more latitude while the former group were regarded with suspicion. There was a suggestion that the former group should be treated differently, which would contravene the principle of equal access to justice for all regardless of motivation to litigate.

'Vexatious' or difficult LIPs were reported to present severe difficulties to courts and court staff. Even though they were understood to be rare, they were reported to take up a disproportionate amount of court and court staff time and were often a focus of discussions with court actors. There was a suspicion that some LIPs present unmeritorious claims and so contribute to slowing down the system needlessly. Also, some court actors associated the behaviour of difficult LIPs with all LIPs. Our observations of LIPs were at odds with the emphasis placed on difficult LIPs, but it should be noted that we were not party to repeated phone calls and prolific emails and did not include business areas in which vexatious LIPs were reported to appear frequently. Furthermore, while we did observe a very small number of LIPs who behaved inappropriately in court, we were not in a position to determine whether it constituted 'vexatious' behaviour. What we saw were individuals who were continually frustrated within the process and desperately pursuing an issue of great importance to them. We were not in a position to assess the merits of any claim. Thus, the absence of data on vexatious or difficult LIPs in this report does not mean that some LIPs do not cause problems. A few can present great difficulties and then cast a long shadow over the majority of 'run of the mill' LIPs.

Further evidence of LIPs' lack of fit in the system was that it is difficult to identify LIPs within the court system. NICTS collect and input data into their Management Information System. Only on the day of the court appearance does it become clear that a litigant is unrepresented. This had implications for contacting LIPs about their next appearance in court or court orders or other matters, and subsequent impact on the courts' readiness to hear LIPs' cases. Often the legal representative for the other party was relied upon to relay the information to the court or the LIP.

Cases involving LIPs were perceived to take much longer. In court, they tended to take longer than a fully represented case. The perception that this was not acceptable because LIPs differed from the norm was common among court actors. LIPs were often left to the end of the day's proceedings and had to wait a long time without being informed.

Many LIPs perceived themselves to be at a disadvantage. This arose from not knowing how to operate in the system and from a sense of being treated unfavourably as an unwelcome usurper. This was often regarded by LIPs as being unfair and was a potential threat to the perception that justice is served.

Barriers to effective participation

This study uses the concept of legal participation to understand how LIPs participated in their proceedings as a way of assessing the human rights standard of effective participation under the right to a fair trial in the European Convention on Human Rights (Article 6).³ Barriers to legal participation are formed when litigants face intellectual, practical and emotional barriers to participating in court proceedings. Effective participation therefore relies on access to good information about proceedings and self-representation; being able to understand the proceedings; and support to overcome the emotional burden that exists when self-representing. Barriers to these three compromised effective participation.

Difficulty in obtaining information, advice and resources

LIPs generally took steps to prepare their cases but their expectations of the availability of information and support were not met. There is a lack of information and advice on the practical, procedural and legal issues relating to their court proceedings and on how to self-represent. While some procedures were straightforward for some LIPs, many faced intellectual, practical and procedural barriers with completing and submitting the appropriate paperwork. Court staff did what they could to help LIPs but often felt constrained by their role and by the time they could spend helping LIPs with the information and support they needed.

Many LIPs appreciated the support they received from McKenzie Friends, though there was variation in the ability and role of different McKenzie Friends. No mechanism exists for assessing their value or performance. There is no consistency in the procedure for McKenzie Friends to be admitted to court with a LIP.

Limits to LIPs' knowledge and understanding

LIPs were often unclear about the law or procedure in their cases and some were even unaware of their lack of knowledge. They often prepared one aspect of their case only to be confronted in court by a different aspect which was beyond their knowledge. Uncertainty about their proceedings was a source of worry for some. Some LIPs were more disadvantaged than others, especially those in complex proceedings, and this was often recognised by judges. LIPs may appear to cope in court but were not always able to follow proceedings. Negotiating with or simply contacting the representative of the opposing party was particularly problematic for

LIPs and was often not done at all. Some LIPs were observed to flounder in complex proceedings and may have benefited from representation. Particular difficulties arose if a LIP was absent from court proceedings. There was no systematic means to contact them; they were particularly disadvantaged if evidence was produced and they were therefore unable to contest it. Cross-examinations were a particular source of difficulty. LIPs found them difficult to conduct and cross-examinations between parties with a history of domestic abuse were fraught.

Emotion and anxiety

LIPs had difficulty separating their emotions whilst self-representing. The emotional reactions of some LIPs were reported to extend as far as being abusive towards legal representatives which deterred some legal representatives from discussing the case with the LIP and could hinder the LIP's own case progression.

The LIPs' scores on the self-rated General Health Questionnaire (GHQ-12) indicated that the prevalence of possible mental ill-health was much higher in the LIP sample (59%) compared to findings from the general population from the Northern Ireland Health Survey 2016-17 (17%).⁴ It was not clear whether the high rate of possible mental ill-health was attributable to self-representation, the circumstances of the legal matter or a combination of the two. Other studies report a high prevalence of high GHQ-12 scores for litigants regardless of representation status.⁵ These findings point to the need for accommodations to be made by court actors when dealing with all litigants, represented or not.

Challenges to equality of arms

In proceedings with a LIP, the judge has to ensure equality of arms as far as practically possible without disadvantaging the other side. S/he can do this by directly asking the LIP questions about the case, simplifying language, explaining procedure, making sure the LIP understands what is going on, relaxing some procedural requirements and relying on the represented party to do some of the paperwork and explanation. Ultimately, it is up to the judge to ensure that an equality of arms is reached. We found some judges went further than others in trying to reach this balance, depending on individual discretion to assist LIPs or adopt inquisitorial approaches. Some judges took a 'sink or swim' approach with LIPs, which could jeopardise the right to an equality of arms. Some court actors feared that judicial assistance for LIPs may be unfair to represented parties. An over-reliance on Court Children's Officers (CCOs) to help LIPs by some judges could place CCOs in a compromised position and threaten their impartiality in the proceedings.

The procedural advice clinic

Of the 56 LIPs invited to the procedural advice clinic piloted in the study, 25 attended. The clinic advised these LIPs on how to prepare their cases and how to conduct themselves in court. It did not advise on legal merits or strategy. The clinic advisor noted that there was a grey line between procedural and legal advice, and that constant vigilance was required to avoid overstepping the line, with the litmus test being whether the advice would influence a LIP's decision (as legal advice would be expected to do) or whether it would inform their decision (as procedural advice could do). The LIPs' responses to the clinic were positive, with almost all of them recommending such a clinic for all LIPs. They said they felt better equipped than before and the advice gave them more confidence. Some said they appreciated being taken seriously. Not all LIPs who attended the clinic demonstrated the advice they received when they were later observed in court, but some attempted to put it into practice. They reported the main limitations of the support were that it was 'too little' or 'too late'. 'Too little'

meant that the support was too limited, or not of the right type. 'Too late' meant they would have benefited from advice much earlier. The clinic model offered learning for future interventions.

Conclusion and recommendations

The findings depict a situation where LIPs are at a disadvantage for several reasons, not simply by not having legal representation. They are not fully accepted as legitimate court users, do not have access to the information to support their efforts to self-represent, have little understanding of law and procedure and are emotionally involved in their proceedings. The retort that this disadvantage is of their own making and they sink or swim at their own peril promotes the norm of the fully represented case and overlooks the rights of all litigants to self-represent and the incumbent duties that flow from ensuring access to a court, effective participation and equality of arms.

There will be cases when representation is necessary, such as when the case is too complex or the litigant's capacity to self-represent is insufficient. The European Court of Human Rights case of *Airey v. Ireland* (1979) provides some guidance here, highlighting the complexity of the LIP's case and her lack of objectivity as reasons why she was unable to self-represent.⁶ The judgment, however, does not indicate when fair trial guarantees provided by Article 6 ECHR might require a judge to address concerns around the LIP's legal capacity. There should be efforts to pre-empt potential breaches, and this study identifies the trigger points that put the right to a fair trial in jeopardy.

Equality of arms for the LIP must be protected alongside effective participation: the ability to influence proceedings requires an understanding of what is expected, being given opportunities to be heard, being prepared, being present and being emotionally supported. Alongside the participatory aspects of self-representation lie the layperson's sense of fair and just legal procedures as experienced during the legal proceedings, which are as important as their sense of a just outcome.⁷ These are the trigger points for the right to a fair trial. Representation was preferable for most people, but for those who cannot afford it or prefer to self-represent, their right to access a court obligates the State to ensure the disadvantage of self-representation does not result in unlawful discrimination. The disadvantage is unlikely to be fully removed but it can be managed to a level at which fair trial guarantees are intact.

The acceptance of the right of litigants to self-represent legitimises their place in the court system but does not dictate that they must be turned into lawyers to pursue their cases. Instead, a change in the orientation of the court service is required which places the needs of all court users on a more equal footing. This attitudinal change compels subsequent changes to some administrative procedures, the development of LIP-oriented sources of support and information, specific judicial techniques and professional legal education.

The recommendations that follow are based predominantly on the data gathered for this report: from LIPs and a wide range of court actors and stakeholders. The Advisory Group established to assist with the progress of the research were also involved in reviewing the recommendations, and while some issues did not achieve consensus the recommendations benefited from exposure to such diverse responses. The final recommendations reflect not just the data, therefore, but the identification of issues arising from the data, the consideration given to diverse perspectives and the insights from academic knowledge of access to justice solutions in other common law jurisdictions. Appendix 2 of the main report contains some examples of reforms to accommodate LIPs. To improve the experience of LIPs and the effectiveness of the court system the recommendations need to be adopted and co-produced in a holistic rather than piecemeal way.

Cultural change

Re-orienting the norm to the legitimate presence of LIPs requires an acceptance that they behave differently and have different requirements to solicitors and barristers, including the additional time they take, their lack of familiarity and understanding, and the possibility of the presence of mental health issues.

1. The overarching principle for our recommendations is that future reforms should be inclusive of multiple perspectives, including court users who should be facilitated to contribute to the re-orientation and development. For example, the membership of the shadow Civil Justice Council and Family Justice Board should be expanded to include litigants, McKenzie Friends, CCOs, NGOs and academics, as is the case in other jurisdictions. This would include appointing independent Chairs to promote transparency and ensure that no single stakeholder group is dominant, and that a plurality of stakeholders is represented.

Any development of systems or changes to current practice may incur new costs which would require additional funds.

2. Explore and secure funding streams for the development and evaluation of initiatives to support LIPs across different business areas, including new models of advice provision.

To manage the expectations of litigants, including LIPs, we recommend a charter that sets out clearly their and other court actors' roles and responsibilities, what to expect of others and to communicate agreed behavioural standards.

3. Offer training for all court actors on litigants' perspectives and how they encounter the court system, including recognition of the implications of the possibility of mental ill-health.
4. Establish a task force to create a Charter of Rights and Responsibilities, which all litigants and court actors are required to comply with, and with redress for breach of the Charter regulated through an independent complaints mechanism.
5. Develop and publish operational guidance on dealing with unacceptable standards of behaviour and prolific applications. This should include a policy on how to support staff who have been complained about.
6. Changes to the system, including information materials, advice models and the Charter, should be developed as a co-production between LIPs, NICTS, the judiciary and the legal profession to maximise coherence, relevance and effectiveness.

Administrative changes

Consistent and reliable methods for contacting LIPs are needed, particularly when they are absent from proceedings, live in other jurisdictions or encounter errors in the administration of their cases. Means to keep track of LIPs within the system would also allow their cases to be timed and inform resource allocation.

7. Identify LIPs within the court system at successive stages of their court proceedings to provide an accurate data count of the number of LIPs in the court system at any one point and to facilitate direct contact with them.
8. Pilot the scheduling of court hearings for LIPs as individual appointment times.

The tendency of many LIPs in the sample to look online for information suggests there is potential for making more of web-based provision of court processes, such as submitting documents. These would benefit not only LIPs but all court users.

9. Make online provision for the submission of some court documents, in addition to traditional hard copy methods.
10. Explore how court apps, interactive online forms, online bundle creation and case management could be developed to support LIPs and the work of the NICTS, drawing on international evidence of justice innovations.

Access to legal services

Measures should be instituted to ensure LIPs who are above the threshold for legal aid are not being disadvantaged by their incapacity to represent themselves, either due to case complexity or emotional attachment. The cost-benefit analyses which some LIPs undertook when deciding whether to instruct a solicitor suggests that discrete pieces of work charged at a published tariff may have encouraged some LIPs to seek fee-paying services of legal professionals.

11. Conduct a review on whether individuals on low incomes are being excluded from entitlement to Legal Aid, and any access to justice implications.
12. Explore how litigant vulnerability might better be supported by the State, either through expanding Legal Aid eligibility on an exceptional basis, the Official Solicitor scheme, or through case-by-case judicial recommendation based on the considerations highlighted in the Equal Treatment Bench Book.⁸
13. Examine the full potential of unbundled legal services within different business areas, drawing on international comparative experiences.

More information

The efforts LIPs took to prepare their cases suggested that they would use available information and that its availability in multiple formats would satisfy different user needs. Of particular value would be access to their court orders and CCO reports which currently are difficult for LIPs to access. Assistance in the form of guidance on standard procedural documentation, such as court forms, would assist the advice sector and LIPs. Efforts to simplify procedures should be targeted on areas most in demand by LIPs or in need of reform.

14. Develop a basic orientation course for LIPs that introduces them to the court system and personnel: it can include training and information on what is expected of them as LIPs, their expected engagement with the court system, what they can expect from court actors and time-frames for litigation.
15. Develop user-focused design principles to guide the redesign of litigant-friendly information and web interface. This should include easily accessible information provided through a variety of different media on how to litigate in person and the procedural requirements of their case. At a minimum, this should cover procedural information relevant to the different business areas, answers to frequently asked questions, and signposting to support services that have capacity and expertise to assist.
16. Develop a repository of relevant Northern Ireland legislation, procedural guidance and key case law for litigants to access.
17. Conduct a language audit on court documents to identify where terms and syntax could be made more reader-friendly.
18. Identify data-security solutions that would allow LIPs to access the online court orders, CCO reports and other relevant communications that are available to other court actors.

19. Develop standard templates for court forms, court bundles, affidavits and skeleton arguments that LIPs can access, selecting business areas most in demand or in need of reform.
20. The management of information and portals needs to be overseen by the NICTS to ensure they are responsive to amendments in procedure and the emerging needs of litigants. NICTS should be allocated appropriate resources to support this and to preserve the service's impartiality as administrators of justice.

More advice

There is a basic need for a hub that can provide procedural advice, information and guidance, which should be staffed by a professionally qualified lawyer who would be able to navigate the line between procedural guidance and legal advice. The ownership of such support is suggested to be with NICTS given its centrality to litigation processes, but the perception of independence and distance from the courts needs to be tested and assured.

21. Assess the best locations, availability and ownership of a LIP liaison/support unit with regards to proximity to court houses, independence of the court service and potential uptake.
22. With reference to the pilot NIHRC procedural advice clinic, create a LIP liaison/support unit, with new funding from the Department of Justice, to provide face-to-face information and advice for LIPs, staffed with a professionally qualified lawyer. In establishing this unit, provide career development opportunities for NICTS staff to enable them to develop their capacity to provide procedural advice to LIPs.

Judicial support

Judicial approaches to obtaining the balance between judicial neutrality and getting to the facts of the case to adequately inform judgement were already practiced by some judges, but not all.

23. Develop specific judicial training on judgecraft for LIPs.

In-court support

LIPs reported that having someone to accompany them in court, either for moral support, to take notes or to seek rights of audience when the LIP was unable to address the court, was helpful.

24. Develop publicly-available guidelines on when a LIP will be able to be accompanied in court by a support person, and the extent to which an in-court support person can assist the LIP.
25. Develop a means of assessing how well McKenzie Friends serve LIPs and review how McKenzie Friends might be included within the court system to assist LIPs, including a consideration of codified rules and/or regulation for McKenzie Friends.

Engaging the legal profession

The study showed that many LIPs were not in direct contact with the legal representative for the other party and consequently opportunities for settling out of court were not explored. There is an opportunity to mediate this gap in communication to promote procedural justice and more rapid conclusions to cases.

26. Train solicitors and barristers on how to represent clients against LIPs as a core part of professional legal education, with continuing professional development supporting this training.

- 27. Provide continuing professional legal education and training for solicitors and barristers on the pastoral/emotional support needs of litigants, on the value of procedural justice as seen from the litigant's perspective and on ways in which communications with LIPs could yield more rapid case conclusion.
- 28. Provide training in lawyer self-care and professional support services to deal with abuse/trauma experienced by lawyers.

Policy development

The last survey of legal need which looked at the uptake of legal processes to address legal needs was conducted over a decade ago.⁹ A legal needs survey would furnish the NICTS with up-to-date estimates of the potential additional uptake of court resources and so inform resource allocation. It could also investigate whether people with a legal need are currently deterred from self-representation by the difficulty in obtaining support and information.

- 29. There is a need for data to understand current demand for court services, particularly whether all individuals who could litigate are currently doing so, and their reasons for not engaging with the court system. One way to address these data needs is to conduct a legal needs survey to identify the nature and extent of legal problems in Northern Ireland, to ensure that the legal needs of people who do not engage with the court system are also assessed.

Research has demonstrated that the relationship between mental illness and rights problems is such to warrant the close coordination between mental health services and legal advice services to improve health and justice outcomes.¹⁰

- 30. Develop a strategic plan for health-justice partnerships in Northern Ireland, where legal support services are co-located with social and health services. This should include identifying how a pilot health-justice partnership could be implemented and evaluated.
- 31. Investigate the use of the GHQ-12 to assess potential mental ill-health for litigants, in line with the draft Programme for Government objective to identify and measure mental ill-health in the population and provide support services. This could be done, for example, by integrating the GHQ-12 within a legal needs survey for Northern Ireland.

Integrating changes

There needs to be an integrated approach to reform, involving all court actors. Systems need to be in place to integrate practice involving LIPs across the board, to evaluate the impact of changes and capture good practice for dissemination. Action research models rooted in problem-centred, client-centred methods for implementing, reflecting on and evaluating continuous development are recommended. The over-arching standards for the right to a fair trial, effective participation and procedural justice are recommended as the evaluative framework.

- 32. Ensure that future Practice Directions take into consideration what should happen when one or more of the parties is a LIP.
- 33. Identify and share exemplars of good practice in dealing with LIPs, including those within the tribunal service, and from other jurisdictions. For example, guidelines on providing written reports for LIPs; clearing court rooms when LIP cases are being heard; exercising caution to avoid reliance on CCOs to inform LIPs about the legal proceedings; out of court negotiations.

34. Changes that are implemented should be subject to evaluation, guided by the principles of fair trial guarantees, effective participation and procedural justice, for example by adopting action research cycles.

Additional recommendations are made in the main report on future research to inform operational and policy change.

1 Empirical research examples:

England and Wales, see Trinder, L., Hunter, R., Hitchings, E., Miles, J., Moorhead, R., Smith, L., Sefton, M., Hinchly, V., Bader, K. and Pearce, J. (2014) *Litigants in person in private family law cases*. Ministry of Justice Analytical Series. Ministry of Justice. Available at: <https://www.gov.uk/government/publications/litigants-in-person-in-private-family-law-cases>

Garton Grimwood, G. (2016) *Litigants in person: the rise of the self-represented litigant in civil and family cases*. Briefing Paper No. 07113, House of Commons Library. Available at: <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN07113>

Lee, R. and Tkacukova, T. (2017) *A study of litigants in person in Birmingham Civil Justice Centre*. The Centre for Professional Legal Education and Research, Birmingham Law School. Available at: http://epapers.bham.ac.uk/3014/1/cepler_working_paper_2_2017.pdf

New Zealand, see Toy-Cronin, B. (2015) *Keeping up appearances: accessing New Zealand's civil courts as a litigant in person*. PhD thesis. University of Otago, Faculty of Law

Australia, see Dewar, J., Smith, B.W. and Banks, C. (2000) *Litigants in person in the Family Court of Australia*. Research Report No. 20. Family Court of Australia. Available at: http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/reports-and-publications/reports/2000/fcoa_pr_litigants_in_person

Hunter, R., Genovese, A., Chrzanowski, A. and Morris, C. (2002) *The changing face of litigation: unrepresented litigants in the Family Court of Australia*. Law and Justice Foundation of New South Wales. Available at: [http://www.lawfoundation.net.au/ljf/site/templates/reports/\\$file/Changing-face-of-litigation.pdf](http://www.lawfoundation.net.au/ljf/site/templates/reports/$file/Changing-face-of-litigation.pdf)

Canada, see Macfarlane, J. (2013) *The national self-represented litigants project: Identifying and meeting the needs of self-represented litigants. Final Report*. Available at: <https://representingyourselfcanada.com/wp-content/uploads/2016/09/srreportfinal.pdf>

USA, see Knowlton, N.A., Cornett, L., Gerety, C.D. and Drobinske, J.L. (2016) *Cases without counsel: research on experiences of self-representation in US Family Court*. Institute for the Advancement of the American Legal System. Available at: <http://iaals.du.edu/honoring-families/publications/cases-without-counsel-research-experiences-self-representation-us>

Justice policy reviews:

Northern Ireland, see Department of Justice (2011) *Access to Justice Review Northern Ireland - The Report*. Available at: <https://www.justice-ni.gov.uk/publications/report-access-justice-2011>

Department of Justice (2015) *A Strategy for Access to Justice – The Report of Access to Justice (2)*. Available at: <https://www.justice-ni.gov.uk/publications/access-justice-review-part-2-final-report>

Office of the Lord Chief Justice (2017a) *Review of Civil and Family Justice in Northern Ireland. Review Group's Report on Civil Justice*. September 2017. Available at: <https://www.judiciary-ni.gov.uk/publications/review-groups-report-civil-justice>

Office of the Lord Chief Justice (2017b) *Review of Civil and Family Justice in Northern Ireland. Review Group's Report on Family Justice*. September 2017. Available at: <https://www.judiciary-ni.gov.uk/publications/review-groups-report-family-justice>

Scotland, see The Scottish Civil Justice Council (2014) *Access to Justice Literature Review: Party Litigants, and the support available to them*. Available at: <http://www.scottishciviljusticouncil.gov.uk/docs/librariesprovider4/scjc-publications/literature-review-on-party-litigants-and-the-support-available-to-them.pdf?sfvrsn=2>

England and Wales, see The Right Honourable Lord Woolf (1995) *Access to Justice: Interim report to the Lord Chancellor on the civil justice system in England and Wales*. Lord Chancellor's Department. Available at: <http://webarchive.nationalarchives.gov.uk/+http://www.dca.gov.uk/civil/interim/contents.htm>

Civil Justice Council (2011) *Access to Justice for Litigants in Person (or self-represented litigants)*. Available at: <https://www.judiciary.gov.uk/wp-content/uploads/2014/05/report-on-access-to-justice-for-litigants-in-person-nov2011.pdf>

2 Office of the Lord Chief Justice, 2017a and b at note 1.

3 McKeever, G. (2013) 'A ladder of legal participation for tribunal users,' *Public Law*, July, pp575-598.

4 Department of Health (NI) (2017) *Health Survey (NI) First Results 2016/17*. Information Analysis Directorate, October 2017. Available at: <https://www.health-ni.gov.uk/publications/health-survey-northern-ireland-first-results-201617>

5 Buchanan, A., Hunt, J., Bretherton, H. and Bream, V. (2001) *Families in conflict: The Family Court Welfare Service: the perspectives of children and parents*. The Policy Press, Bristol; Trinder, L., Connolly, J., Kellet, J. and Notley, C. (2005) *A profile of applicants and respondents in contact cases in Essex*, DCA Research Series 1/05.

6 *Airey v Republic of Ireland* (1979) ECHR Application no. 6289/73.

7 Lind, E.A. and Tyler, T.R. (1988) *The Social Psychology of Procedural Justice*. Springer, New York; Tyler, T.R. (2000) 'Social Justice: Outcome and Procedure', *International Journal of Psychology* 35(2) pp117-125.

8 Judicial College (2018) *Equal Treatment Bench Book, February 2018*. Available at: <https://www.judiciary.gov.uk/wp-content/uploads/2018/02/equal-treatment-bench-book-february-v6-2018.pdf>.

9 Dignan, T. (2006) *Northern Ireland Legal Needs Survey*. Northern Ireland Legal Services Commission.

10 Pleasence, P. and Balmer, N.J. (2009) 'Mental health and the experience of social problems involving rights: Findings from the United Kingdom and New Zealand', *Psychiatry, Psychology and Law* 16(1), pp123-140; The Low Commission and Advice Services Alliance (2015) *The role of advice services in health outcomes – Evidence review and mapping study*. Available at: <https://www.lowcommission.org.uk/News/Advice-and-Health>



ISBN 978-1-85923-279-8



9 781859 232798

Price £5.00